



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>As proposed</b>	Bill No:	<b>AB 1458</b>
Tax:	<b>Business Taxes</b>	Author:	<b>Kelley</b>
Board Position:	<b>Support – Board-sponsored</b>	Related Bills:	

### BILL SUMMARY

This bill contains Board of Equalization-sponsored provisions for the sales and use tax and the special taxes and fees programs which would do the following:

- Provide the Board with the administrative authority to compromise a tax or fee debt under the Sales and Use, Use Fuel, and Underground Storage Tank Maintenance Fee laws. (§§7093.6, 9278, and 50156.18)
- Allow the Board to grant relief from interest under the Fee Collection Procedures Law if the Board finds a person's failure to make a timely return or payment was due to a disaster. (§55046.5)

**Proposed amendments contained in this version of the bill.** The introduced version of this bill contains language that would revise the Emergency Telephone Users Surcharge Law to impose a surcharge upon service users for each access line for each month a service user subscribes or contracts with the service supplier. These Board-sponsored provisions will be removed from the bill and replaced with the new Board-sponsored provisions for offers in compromise and interest relief.

### ANALYSIS

#### Offers in Compromise

*Sections 7093.6, 9278, and 50156.18*

#### **Current Law**

Under existing administrative procedures, when a tax or fee liability is not paid by a taxpayer or feepayer when due, the Board will bill the tax or feepayer, negotiate for payments, search for the tax or feepayer's assets, and take collection actions to use the assets to satisfy the tax or fee debt. Collection actions may include manually searching records for assets, making telephone calls, or seizing and selling vehicles, vessels, or stocks. In the event of a hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the tax or fee debtor improves. However, if tax or feepayers can obtain loans or can use credit lines to pay their tax or fee debts, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed and assets cannot be located, the Board may write off the debt under the Government Code

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(discharge from accountability). When a debt is written off, the debt is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax or fee debt, and interest and applicable penalties continue to accrue. The debt also remains on the tax or feepayer's credit record, impeding his or her ability to obtain credit.

Under existing law, the Board does not have the statutory authority to compromise a tax or fee debt, and instead must bring a civil action against the tax or fee debtor. Such an action requires the assistance of the Attorney General (AG). In general, an offer in compromise is a process whereby the tax or feepayer offers to pay an amount that he or she believes to be the maximum amount that can be paid within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount. Currently, taxes and fees administered by the Board may be compromised only where there is doubt as to the collectibility, and through the AG's statutory authority to obtain a judgment against the tax or feepayer to collect the amount due. After the offer is reviewed for completeness and reasonableness, the Board collects the amount offered and the review process commences, with final approval by the Chief Counsel. A stipulated judgment is obtained followed by the filing of a satisfaction of the judgment when all terms of the agreement have been met. The court documents, which include a stipulation setting forth the terms of the compromise, are a matter of public record. In the offer in compromise process, the Board generally follows the Franchise Tax Board's (FTB) procedures and Employment Development Division's (EDD) law with respect to:

- the terms of the offer
- the process leading up to the acceptance of the offer, including high levels of review; and
- the refunding of rejected offers without interest, at the tax or feepayer's discretion.

### **Proposed Law**

This bill would provide the Board with the administrative authority to compromise a tax or fee debt under the Sales and Use, Use Fuel, and Underground Storage Tank Maintenance Fee laws, comparable to the authority provided the FTB. For the smaller compromises (reductions in tax or fees of \$7,500 or less), the bill would allow the Executive Director and Chief Counsel, jointly, to compromise the debt or delegate the authority to others within the Board. For those cases in which the reduction in tax or fee exceeds \$7,500, this bill would provide that the Board, itself, would have the authority to compromise the debt upon recommendation by staff. However, for those cases in which the reduction in tax or fee exceeds \$7,500, but is less than \$25,000, this bill would provide that the Board, by resolution, could delegate to the Executive Director and Chief Counsel, jointly, its authority to compromise the debt. The bill would provide that a public record would be placed on file, comparable to those required by laws governing EDD and FTB offers in compromise, as well as the Board's settlement procedures. The record would include a summary statement as to why the compromise would be in the best interests of the state.

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### Comments

The FTB and EDD have the authority to administratively compromise final tax debts that are due and payable, and the processes and procedures generally are similar. However, the oversight/review provisions differ. For EDD, the criteria for a compromise and its procedures and processes are codified, and for the FTB, the codified authority is general in nature.

The benefits of this bill include:

- The existing stipulated judgment process affords the state nothing that cannot be achieved administratively through this bill. The stipulated judgment proceeding is cursory in nature, without the formality of a full judicial proceeding, and information now available to the public through the court proceedings would be on file with the Board, available to the public. This bill would remove an unnecessary (though relatively small) workload from the court system. In addition, in cases of little overall benefit to the state (compromises of \$5,000 and under) but costly for the staff to conduct court-related activities, the process would be significantly more efficient. Additionally, because this bill would remove a non-tax or non-fee related obstacle (the court and state's costs relating to the civil action) from the offer in compromise process, it should enhance the relationship between the public and the Board. This bill makes sense from the perspective of the tax and feepayers and the state.
- Under current procedures, going through the court delays the process by many months and requires a time-consuming process for AG staff to prepare and file the pleadings and meet the court's calendar.
- This bill would streamline and expedite the offer in compromise process, which benefits the state and the tax and feepayer. Under this bill, tax or fee debtors who are the most needy can become taxpayers and feepayers, with the stigma of the debt removed. Currently, when the Board discharges these very small cases, the lien remains on record and these tax and feepayers still have the worry about a Board lien affecting their credit record and a potential collection action.
- Because under the current process the debt is reduced to a judgment, it is unclear whether the Board could administratively assess/reinstate the total unpaid amount or take collection actions in the case of misrepresentation of assets or income. If the Board were required to litigate the reinstatement of the assessment and collection thereof, enforcement generally would not be cost-effective. Therefore, there is no effective consequence for noncompliance.
- By eliminating the court proceeding, the offer in compromise process would be expedited. Greater efficiency in resolving these collection cases would be realized.
- Eliminating the court proceeding would also increase the number of tax and feepayers that could be considered under the current offer in compromise program. Tax and feepayers whose liabilities have been discharged in bankruptcy or whose liens have expired are precluded from using the current process because the Board is not able to obtain a stipulated judgment.

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- Historically, compliance is maximized by effective enforcement of the law. If the tax or feepayer defaults on the terms of the compromise agreement or misrepresents his or her assets or income, this bill would provide that the Board could reinstate the entire unpaid amount, which is comparable to the FTB, EDD and Internal Revenue Service (IRS) authorities. In addition, if the facts warrant, this bill would provide for criminal penalties, which would be in conformity with the IRS and settlement sanctions.

### **Interest Relief**

#### *Section 55046.5*

### **Current Law**

Under existing Sales and Use Tax Law, Section 6593 provides that a person may be relieved of interest, as specified, if the Board finds the person's failure to make a timely return or payment was due to a disaster. With the exception of the Fee Collection Procedures Law, these provisions are also contained in all other tax and fee programs administered by the Board. The lack of this authority in current law appears to be due only to an oversight in the drafting of the original, enabling legislation.

The Fee Collection Procedures Law contains provisions for the administration and collection of various fee programs administered by the Board. These provisions were added to the Revenue and Taxation Code so that newly established fee and tax programs could simply reference this law for their administration and collection authority, consistent with other Board-administered taxes and fees. Currently, the California Tire Fee, Natural Gas Surcharge, and Ballast Water Fee are administered and collected by the Board in accordance with the Fee Collection Procedures Law.

### **Proposed Law**

This bill would simply add conforming relief of interest provisions to the Fee Collection Procedures Law to provide a person relief of interest, as specified, if the Board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect.

### **Comment**

This proposal would provide consistency among all the Board-administered tax and fee programs.

### **COST ESTIMATE**

Any Board costs associated with this bill would be absorbable.

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**REVENUE ESTIMATE**

The provisions of this bill should not have a material affect on state revenues. The offers in compromise provision simply codifies and streamlines the existing Board practices. The relief of interest provision may result in a very minor loss of interest revenues to the state. The overall revenue impact of these provisions are expected to be minor.

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